IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 771 OF 2003.

Rahimabi Daudkhan Pathan & anr. ... Appellants.
Versus.
Abbas Husain Malwankar
(since deceased through LRs.)
Tabrej Abbas Malvankar & others. ... Respondents.

Shri Madhav Jamdar for the Appellants.

Shri G.S.Godbole for the Respondents Nos.1A and 2.

CORAM : ABHAY S.OKA, J.

DATED : 20th July, 2007.

P.C.:

1. Shri Jamdar, the learned Counsel appearing for the Appellants on instructions of the Appellants states that the Appellants are not pressing the second appeal on merits. He, however, submits that considering the old age of the 1st Appellant and considering the fact that the 1st Appellant is ailing, a longer time to vacate may be granted. He submits that the Appellant will have to acquire a premises elsewhere and they are occupying the suit premises for considerably long time. The prayer made by the Shri Jamdar for grant of longer time is opposed by the contesting Respondents by contending that the Appeal is of the year 2003. It is contended that the Appellants have other premises.

2. If this Appeal was to remain pending in this Court for final hearing, considering the large pendency of the Second Appeals in this Court, the same would not have reached final hearing in near future. The

Appellants have made a statement that they are not pressing the Appeal on merits and therefore, the decree will attain finality. Considering the fact that the Appellants are occupying the suit property for a long time, they deserve to be granted time of three years to vacate the suit premises.

3. Hence the following order is passed:

(i) The Appeal is dismissed as not pressed. No order as to costs.

(ii) Notwithstanding the dismissal of the Appeal, the decree for possession shall not be executed till 31st July 2010, subject to the Appellants and all adult members in the family filing usual undertakings to vacate in this Court within a period of six weeks from today. If the undertakings are not filed within the stipulated period of six weeks, the decree for possession will become executable.

(iii) Copies of the undertakings to be supplied to the Advocate for the Respondents in advance.

(iv) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.